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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 JOHN BUSZKIEWICZ,

8 Plaintiff,

9 v.

10 NANCY A BERRYHILL, Deputy
11 Commissioner of Social Security for Operations,

12 Defendant.

Case No. C17-1484 JCC

**ORDER REVERSING AND
REMANDING THE CASE FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS**

13 Plaintiff, John Buszkiewicz, seeks review of the denial of his application for
14 Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB). Plaintiff contends
15 the ALJ erred by discounting several medical opinions and his testimony. Dkt. 9. As discussed
16 below, the Court REVERSES the Commissioner's final decision and REMANDS the matter for
17 further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

18 I. BACKGROUND

19 Plaintiff is currently 56 years old, has a limited education, and has worked as a line cook.
20 Tr. 33. Plaintiff alleges disability as of March 7, 2014. Tr. 21. Plaintiff's applications for SSI
21 and DIB were denied initially and on reconsideration. Tr. 74, 75, 92, 93. The ALJ conducted a
22 hearing on March 7, 2016. Tr. 41. On April 28, 2016, the ALJ issued the decision that is
23 presently before the Court, finding plaintiff not disabled. Tr. 21-35. Plaintiff reapplied for

1 disability benefits and, in March 2018, the Commissioner determined that plaintiff became
2 disabled on April 29, 2016—the day after the ALJ issued the decision under review here. Dkt.
3 13-1.

4 II. THE ALJ'S DECISION

5 Utilizing the five-step disability evaluation process,¹ the ALJ found:

6 **Step one:** Plaintiff has not engaged in substantial gainful activity since the alleged onset
7 date of March 7, 2014.

8 **Step two:** Plaintiff has the following severe impairments: degenerative disc disease of
9 the lumbar and cervical spine, fibromyalgia, and anxiety disorder.

10 **Step three:** These impairments do not meet or equal the requirements of a listed
11 impairment.²

12 **Residual Functional Capacity:** Plaintiff can perform light work, lifting and/or carrying
13 20 pounds occasionally and 10 pounds frequently. He can stand or walk six hours and sit
14 for six hours a day. He can occasionally climb ramps or stairs, never climb ladders, ropes
or scaffolds, frequently balance and crouch, and occasionally stoop, kneel, and crawl. He
must avoid concentrated exposure to extreme cold and excessive vibration, and must not
work at unprotected heights. He can perform simple routine tasks, in a routine work
environment with simple work-related decisions and only superficial interaction with
coworkers and the public.

15 **Step four:** Plaintiff cannot perform past relevant work.

16 **Step five:** Because there are jobs that exist in significant numbers in the national
17 economy that plaintiff can perform, plaintiff is not disabled.

18 Tr. 23-35. The Appeals Council denied plaintiff's request for review, making the ALJ's decision
19 the Commissioner's final decision. Tr. 1.³

20 III. DISCUSSION

21 This Court may set aside the Commissioner's denial of social security benefits only if the
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23 ¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P. Appendix 1.

³ The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.

1 ALJ's findings are based on legal error or not supported by substantial evidence in the record as
2 a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). "Substantial evidence" is
3 more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable
4 mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389,
5 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible
6 for determining credibility, resolving conflicts in medical testimony, and resolving any other
7 ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the
8 Court is required to examine the record as a whole, it may neither reweigh the evidence nor
9 substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954
10 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is
11 the Commissioner's conclusion that must be upheld. *Id.*

12 **A. Medical Source Opinions**

13 Social Security regulations distinguish among treating, examining, and nonexamining
14 physicians. 20 C.F.R. § 404.1527. "While the opinion of a treating physician is ... entitled to
15 greater weight than that of an examining physician, the opinion of an examining physician is
16 entitled to greater weight than that of a non-examining physician." *Garrison v. Colvin*, 759 F.3d
17 995, 1012 (9th Cir. 2014).

18 In this case, there are no treating doctors' opinions. Six examining medical sources and
19 two nonexamining doctors offered opinions. The ALJ rejected opinions from every examining
20 medical source and accepted the opinions of the two nonexamining doctors.

21 An ALJ may only reject the uncontradicted opinion of an examining doctor for "clear and
22 convincing" reasons supported by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 675
23 (9th Cir. 2017). Even if contradicted by another doctor's opinion, the opinion of an examining

1 doctor may only be rejected for “specific and legitimate” reasons supported by substantial
2 evidence in the record. *Id.*

3 1. Mark Vandervort, P.A.-C.

4 A physician’s assistant is a “medical source” but not an “acceptable medical source.” *See*
5 20 C.F.R. § 404.1502(a), (d). An ALJ may reject opinions from such sources by providing
6 “germane” reasons. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

7 Mr. Vandervort issued two opinions on plaintiff’s condition, in January 2014 and August
8 2015. Tr. 518, 510. The ALJ gave “great weight” to the first, which opined plaintiff could
9 perform light work, and “little weight” to the second, which opined plaintiff could perform
10 sedentary work. Tr. 30-31. The ALJ discounted the 2015 opinion on the grounds that it was
11 inconsistent with Mr. Vandervort’s own findings of normal gait, full upper extremity range of
12 motion, and ability to stand on heels and toes. Tr. 31. The 2014 opinion, to which the ALJ gave
13 great weight, noted the same upper extremity range of motion and heel/toe stand results; gait was
14 not documented. Tr. 522. In a whole-body examination, it is unsurprising that some results are
15 normal. The ALJ does not identify any significance to these selected results. And the ALJ fails
16 to address the changes between the 2014 and 2015 examination findings that support greater
17 restrictions. Mr. Vandervort documented worsening range of motion in the neck between 2014
18 and 2015. Tr. 523, 513. He also gave an increased severity rating in 2015 (“Marked”) compared
19 to 2014 (“Moderate”) for plaintiff’s cervical stenosis. Tr. 511, 519. And Mr. Vandervort added
20 a diagnosis of fibromyalgia in 2015.⁴ Tr. 511. In this context, the ALJ’s listing of a few normal
21 results, without more, is not a germane reason to discount Mr. Vandervort’s opinion.

22 The Court concludes the ALJ erred by discounting Mr. Vandervort’s 2015 opinion.

23 _____
⁴ The ALJ concluded that fibromyalgia was one of plaintiff’s severe impairments. Tr. 24.
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1 2. Daniel Stephenson, D.O.

2 In October 2014, Dr. Stephenson opined that plaintiff could only perform sedentary
3 work, based on findings of decreased range of motion in plaintiff's neck, back, hips, and knees.
4 Tr. 449-51. The ALJ gave his opinion "partial weight" because treatment notes from August
5 2014 show full range of motion and strength in upper and lower extremities, except for left hand
6 weakness. Tr. 31 (citing Tr. 364-66). The August 2014 exam did not document neck or back
7 range of motion.

8 Consistency with the record as a whole is a factor relevant to evaluating a medical
9 opinion. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Here, in the record as a whole, neck
10 range of motion is consistently below normal, in accord with Dr. Stephenson's findings, but
11 other findings are less consistent. Tr. 523, 405, 384, 381, 377, 420, 475, 513, 266, 488 (neck
12 range of motion was decreased in eight of ten examinations between January 2014 and August
13 2015). Back range of motion was decreased in January 2014, as Dr. Stephenson found, but
14 normal in August 2015. Tr. 523, 513. Extremity range of motion findings were largely normal,
15 although three of seven exams found decreased hip range of motion, as Dr. Stephenson found.
16 Tr. 405, 384, 381, 377, 420, 488, 475, 513-14. Extremity strength (which Dr. Stephenson did not
17 report) was normal in March 2012 and January 2014, but upper right extremity weakness was
18 found in February 2012. Tr. 426, 522-24, 428. Shoulder strength was intact in April 2015 but
19 decreased bilaterally in July 2015. Tr. 475, 488.

20 Given this mix of evidence, and mindful that it is the ALJ's responsibility to resolve
21 conflicts in the medical evidence, the Court concludes that substantial evidence supports the
22 ALJ's interpretation that Dr. Stephenson's opinions relied on findings not supported by the
23 record as a whole. *See Andrews*, 53 F.3d at 1039 (ALJ is responsible for "resolving conflicts in

1 medical testimony”). Accordingly, the ALJ did not err by discounting Dr. Stephenson’s
2 opinions.

3 3. W. Douglas Uhl, Psy.D.

4 The ALJ gave “little weight” to Dr. Uhl’s opinion that plaintiff would be severely
5 impaired in the ability to learn new tasks and markedly impaired in the ability to maintain
6 appropriate behavior in a work setting. Tr. 31, 433. The Commissioner concedes that the ALJ
7 erred by giving Dr. Uhl’s finding that plaintiff is a “concrete thinker” as a reason to discount his
8 opinion, because concrete thinking indicates deficiency in abstract thinking. *See* Dkt. 12 at 6, n.
9 1; Tr. 434. The ALJ also discounted Dr. Uhl’s opinion because he examined the plaintiff once
10 and did not review his medical records. Tr. 31. Examining plaintiff once would be a reason to
11 favor a *treating* doctor’s opinion over an examining doctor’s, but it is not sufficient here, where
12 the ALJ rejected Dr. Uhl’s opinion in favor of nonexamining doctors’ opinions. *See Garrison*,
13 759 F.3d at 1012. Similarly, because the ALJ listed “physically examining the claimant” one
14 time as a reason to *accept* Mr. Vandervort’s 2014 opinion, the ALJ cannot use the same reason to
15 *reject* Dr. Uhl’s opinion. Tr. 30, 31. As for reviewing records, the ALJ identifies nothing in
16 plaintiff’s medical records that would contradict or undermine Dr. Uhl’s opinion, or any
17 information that might cause Dr. Uhl to change his opinion if he were aware of it. In this
18 context, not reviewing medical records is not a specific and legitimate reason to discount Dr.
19 Uhl’s opinion.

20 The Court concludes the ALJ erred by discounting Dr. Uhl’s opinion.

21 4. Ellen L. Walker, Ph.D.

22 The ALJ gave “little weight” to Dr. Walker’s opinions that plaintiff was markedly limited
23 in his abilities to learn new tasks, persist in tasks by following detailed instructions, and

1 complete a normal workday and workweek, on the grounds that they are inconsistent with Dr.
2 Walker's own largely-normal clinical findings. Tr. 31 (citing Tr. 502). This was a permissible
3 reason to discount her opinions. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)
4 (conflict between doctor's opinion and her own findings was a "specific and legitimate" reason
5 to reject her opinion). For example, Dr. Walker noted that plaintiff "has a long history of
6 working" and her clinical interview revealed that plaintiff had worked as a cook for more than
7 two decades, which is inconsistent with the opined limitation on the ability to complete a normal
8 workday and workweek. Tr. 500. Dr. Walker also opined that plaintiff "now needs to be
9 retrained for non-physical profession," which is inconsistent with the opined limitation on
10 completing a normal workday and workweek in any profession. Tr. 502. The Court concludes
11 the ALJ did not err by discounting Dr. Walker's opinions.

12 5. Susan Hakeman, M.D.

13 The ALJ gave "very little weight" to Dr. Hakeman's opinions that plaintiff was severely
14 limited in his abilities to persist in detailed tasks and to complete a normal workday and
15 workweek, and markedly limited in his abilities to maintain punctual attendance, ask simple
16 questions or request assistance, and communicate and perform effectively in a work setting. Tr.
17 31 (citing Tr. 507). The ALJ discounted these opinions because they were inconsistent with Dr.
18 Hakeman's own findings that were entirely normal except for errors in concentration tasks. Tr.
19 508. Nothing in her clinical interview or mental status examination would support the extreme
20 opined limitations. The Court concludes the ALJ did not err by discounting Dr. Hakeman's
21 opinions.

22 6. Anselm A. Parlatore, M.D.

23 The ALJ gave "little weight" to Dr. Parlatore's opinions that plaintiff was markedly

1 limited in his abilities to maintain punctual attendance and complete a normal workday and
2 workweek because the opinions conflicted with Dr. Parlatore's own examination showing almost
3 entirely normal results. As with Dr. Walker, the Court concludes this was a permissible reason
4 to discount his opinions. For example, Dr. Parlatore's clinical interview revealed that plaintiff
5 worked for 28 years as a cook, which is inconsistent with the opined limitation on the ability to
6 complete a normal workday and workweek. Tr. 441.

7 Another reason the ALJ gave to discount Dr. Parlatore's opinion, that he included "legal
8 counsel" as a recommendation, was erroneous. Tr. 31 (quoting Tr. 443). Dr. Parlatore listed
9 "legal counsel, pain clinic, rheumatologist, therapy" as treatment recommendations. Tr. 443.
10 The ALJ's conclusion that this suggested "that any assessed limitation was likely related to a
11 legal rather than medical problem" is illogical. Tr. 31. It would be equally logical to conclude
12 that any limitation related exclusively to plaintiff's pain. However, inclusion of an erroneous
13 reason was harmless error because the ALJ provided the specific and legitimate reason that Dr.
14 Parlatore's opinion was inconsistent with his own findings. *See Molina v. Astrue*, 674 F.3d
15 1104, 1115 (9th Cir. 2012) (error harmless where "inconsequential to the ultimate disability
16 determination"). The Court concludes the ALJ did not err by discounting Dr. Parlatore's
17 opinions.

18 **B. Plaintiff's Testimony**

19 Plaintiff testified that he cannot sit more than 45 minutes, stand more than 20 minutes, or
20 walk more than half a block, and he drops things frequently because his grip is weak. Tr. 60, 58.
21 If, as here, the claimant has presented objective medical evidence of an impairment that could
22 reasonably be expected to produce the pain or other symptoms alleged, and there is no evidence
23 of malingering, the ALJ may only reject the claimant's testimony "by offering specific, clear

1 and convincing reasons for doing so. This is not an easy requirement to meet.” *Trevizo*, 871
2 F.3d at 678 (quoting *Garrison*, 759 F.3d at 1014-15). In evaluating the ALJ’s determination at
3 this step, a court may not substitute its judgment for that of the ALJ. *Fair v. Bowen*, 885 F.2d
4 597, 604 (9th Cir. 1989). As long as the ALJ’s decision is supported by substantial evidence, it
5 should stand, even if some of the ALJ’s reasons for discrediting a claimant’s testimony fail. *See*
6 *Molina*, 674 F.3d at 1115 (ALJ’s decision to discredit the claimant’s testimony should be upheld
7 if the ALJ provided valid reasons supported by the record even if the ALJ also provided one or
8 more invalid reasons).

9 The ALJ’s analysis of plaintiff’s testimony largely consists of a lengthy summary of the
10 medical evidence with little analysis. Although the ALJ’s reasoning is scattered over several
11 pages and interspersed with evaluation of the medical opinions, it appears that the ALJ
12 discounted plaintiff’s symptom testimony on the grounds that it was inconsistent with his own
13 statements, the medical record shows only conservative treatment, and plaintiff left work for
14 reasons other than disability. Tr. 27-32.

15 1. Inconsistent Statements

16 Inconsistencies in a claimant’s testimony can be sufficient reasons to reject the claimant’s
17 testimony. *Molina*, 674 F.3d at 1112. Here, the ALJ found it inconsistent that, in an
18 examination by Mr. Vandervort in January 2014, plaintiff reported “[n]o numbness or tingling in
19 the lower extremities” while at the March 2016 hearing, plaintiff testified that his “left leg will
20 go numb” if he sits or stands for too long. Tr. 521, 60. Plaintiff has degenerative disc disease,
21 meaning it tends to worsen over time, and Mr. Vandervort documented worsening impairments
22 between January 2014 and August 2015. *See* Tr. 24, 511, 519. Treatment records show that
23 plaintiff denied leg numbness in 2012 (Tr. 279) and began consistently reporting it in late 2014

1 through 2015. Tr. 364 (“intermittent periods of numbness in his calf and in his feet”); Tr. 383,
2 379, & 375 (“numbness in the left thigh”); Tr. 487 (tingling feet); 462 (“painful tingling in the
3 feet”). Viewing the record as a whole, plaintiff’s statements are not inconsistent. *See Thomas*,
4 278 F.3d at 954 (court must consider the record as a whole when determining if substantial
5 evidence supports the ALJ’s decision).

6 The ALJ also found plaintiff’s January 2014 report of neck pain sometimes radiating into
7 his right shoulder to be inconsistent with his August 2015 report of neck pain sometimes
8 radiating into his left arm. Tr. 29 (citing Tr. 521, 515). Plaintiff has told his treating doctor that
9 “his pain varies in location.” Tr. 419. The core pain is consistently in his neck, and the ALJ
10 does not explain why the secondary occasional radiation outward should be the same every time.

11 The ALJ noted that in October 2014 plaintiff reported “[n]o specific injuries” related to
12 his back and neck pain, while in August 2015 he reported his neck condition was “caused by
13 auto accident a few years ago.” Tr. 447, 500. In both exams he also reported that he has had
14 progressively worsening pain for *over 20 years*. Tr. 447, 500. Given that context, plaintiff’s
15 speculation that an auto accident contributed to recent worsening is of little import. Tr. 447, 500.

16 Treatment records show that plaintiff reported drinking “Beer Approx 2 dirnks [sic] per
17 day.” Tr. 405. The ALJ found this inconsistent with his testimony. Tr. 32. Plaintiff explained
18 that the two beers per day treatment note resulted from a “misunderstanding” and that he only
19 drinks “maybe two beers a month if that....” Tr. 64. This is supported by his consistent reports
20 to examining doctors that he drinks “an occasional beer.” Tr. 505; *see also* 265, 360, 365, 376,
21 415. The ALJ failed to address plaintiff’s explanation for the treatment note reporting two drinks
22 daily, and his otherwise uniform reports throughout the record that he drinks only occasionally.

23 Plaintiff answered “No” when the ALJ asked if he had done any work “for cash.” Tr. 47.

1 The ALJ found this inconsistent with plaintiff's report in August 2015 that on days "he feels
2 good, he goes out and tries to walk or make a little money." Tr. 500. At the hearing, plaintiff
3 testified that sometimes he drives a friend who mows lawns, and the friend will put gas in
4 plaintiff's truck in return. Tr. 49. Plaintiff thus makes a little money, in the sense that he saves
5 money he would otherwise spend buying gas, but does not receive cash.

6 In each example, the ALJ's interpretation that plaintiff's statements are inconsistent relies
7 on a selective reading of the record, and the ALJ fails to address reasonable explanations for any
8 apparent discrepancy. Even taken together, these examples do not constitute a "clear and
9 convincing" reason to discount plaintiff's testimony. The Court concludes the ALJ erred by
10 discounting plaintiff's testimony on the grounds of inconsistent statements.

11 2. Medical Record and Conservative Treatment

12 A claimant's symptom testimony cannot be rejected solely because the severity of the
13 symptoms alleged is not supported by the medical evidence, but the medical evidence is relevant
14 in assessing the testimony. *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) ("Although
15 lack of medical evidence cannot form the sole basis for discounting pain testimony, it is a factor
16 that the ALJ can consider in his credibility analysis."). Inadequately explained failure to seek
17 treatment or follow prescribed treatment can be a sufficient reason to reject the claimant's
18 testimony. *Molina*, 674 F.3d at 1112. However, an ALJ must consider a claimant's reasons for
19 failure to seek treatment or follow a prescribed course of treatment. *Trevizo*, 871 F.3d at 679-80
20 (ALJ erred in weighing failure to take narcotics against claimant's credibility, because ALJ "did
21 not address the believability of Trevizo's proffered reasons"). Here, the ALJ concluded that
22 plaintiff's pain was not as severe as alleged because he was given only conservative treatment,
23 not narcotics or surgery, and he did not visit the pain clinic between July 2015 and the March

1 2016 hearing. Tr. 29.

2 Plaintiff was treated with epidural steroid injections, and had radiofrequency ablation.
3 Tr. 267, 268, 469, 56. Epidural steroid shots are not generally considered conservative
4 treatment. *See Revels v. Berryhill*, 874 F.3d 648, 667 (9th Cir. 2017); *Garrison*, 759 F.3d at
5 1015 n. 20. Burning a nerve, which is more permanent, is not likely to be considered
6 conservative in most cases.

7 The ALJ concluded that plaintiff's impairments were not as severe as alleged because
8 one treatment providers said surgery was not "absolutely" needed and another said that "surgery
9 would likely lead to unpredictable results." Tr. 28 (citing Tr. 267, 278). That surgery was not
10 certain to help suggests that the cause of his symptoms is difficult to address, not that his
11 symptoms are mild.

12 The ALJ's conclusion that plaintiff's "pain was not severe enough to warrant narcotic
13 medication" is unsupported by the record. Tr. 28. His doctor did prescribe narcotics, but
14 stopped because "none of the narcotic pain medications tried thus far have controlled his pain to
15 any significant degree...." Tr. 396.

16 Plaintiff did not fail to follow a prescribed course of treatment. He followed prescribed
17 courses of narcotics, steroid injections, chiropractic treatment and physical therapy, but none
18 helped more than minimally. *See* Tr. 320, 352, 375. The ALJ failed to address whether
19 plaintiff's failure to seek further treatment at the pain clinic after July 2015 was adequately
20 explained by the clinic's inability to mitigate his pain significantly. The ALJ thus erred by
21 discounting plaintiff's testimony on the grounds that the medical record, conservative treatment,
22 or the failure to seek further treatment show that his symptoms are less severe than alleged.

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The ALJ's interpretation that plaintiff testified he could do his former job is unsupported by the record. *See* Tr. 32. The ALJ asked the compound question: "If you were offered a job or if the casino said, hey, we want you to come back *would you have been* able to do the job?" and plaintiff replied "No doubt...." Tr. 52 (emphasis added). His attorney later asked the clarifying question "[Were you] mentioning that you could, if somebody offered you a job you'd take a job back in 2012[?]" and plaintiff replied "Yeah." Tr. 53. This testimony does not establish that plaintiff believed that, at the time of the March 2016 hearing, he could perform his previous work as a cook. Moreover, it is undisputed that he cannot. Tr. 33 ("claimant is unable to perform any past relevant work").

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1 IV. SCOPE OF REMAND

2 Plaintiff requests the Court remand the case for further administrative proceedings. Dkt.
3 9 at 16. In general, the Court has “discretion to remand for further proceedings or to award
4 benefits.” *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). The Court may remand for
5 further proceedings if enhancement of the record would be useful. *See Harman v. Apfel*, 211
6 F.3d 1172, 1178 (9th Cir. 2000). The Court may remand for benefits where (1) the record is
7 fully developed and further administrative proceedings would serve no useful purpose; (2) the
8 ALJ fails to provide legally sufficient reasons for rejecting evidence, whether claimant testimony
9 or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ
10 would be required to find the claimant disabled on remand. *Garrison*, 759 F.3d at 1020.

11 Here, the Court finds that enhancement of the record would be useful. Although Mr.
12 Vandervort’s opinion limits plaintiff to “sedentary” work, the form he filled out defines
13 “sedentary” differently than Social Security regulations do. *Cf.* Tr. 512 (“Able to lift 10 pounds
14 maximum and frequently lift or carry lightweight articles. Able to walk or stand only for brief
15 periods. ... Frequently means ... 2.5 to 6 hours” per day) *with* 20 C.F.R. §§ 404.1567(a),
16 416.967(a) (“lifting no more than 10 pounds at a time and occasionally lifting or carrying articles
17 like docket files, ledgers, and small tools. [W]alking and standing are required occasionally”),
18 SSR 83-10 (“occasionally” means up to 2 hours per day). There is no vocational expert
19 testimony, or other evidence, as to whether a person with an RFC incorporating Mr.
20 Vandervort’s limitations would be able to perform any jobs available in significant numbers. In
21 addition, plaintiff testified that he can only sit, stand, and walk for limited periods at a time, but
22 did not testify how much he could sit, stand, or walk total in an eight-hour day. It is also unclear
23 how Dr. Uhl’s opined limitations on learning new tasks and maintaining appropriate behavior

1 would affect plaintiff's RFC, which already limits plaintiff to "simple routine tasks" and "only
2 superficial interaction with co-workers and the public." Enhancement of the record would be
3 useful and, accordingly, remand for further proceedings is appropriate.

4 V. CONCLUSION

5 For the foregoing reasons, the Commissioner's final decision is REVERSED and this
6 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §
7 405(g).

8 On remand, the ALJ should reevaluate Mr. Vandervort's and Dr. Uhl's opinions and
9 plaintiff's testimony, reassess the RFC as appropriate, and proceed to step five as needed.

10 DATED this 21st day of August, 2018.

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12 
13 John C. Coughenour
14 UNITED STATES DISTRICT JUDGE
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